

- c) If the Eligible Customer thereafter renews its request for the same Transmission Service referred to in Section 11.2.a by tendering an application under Section 211 of the FPA, the Local Furnishing Participating TO, within ten (10) Calendar Days of receiving a copy of the Section 211 application, will waive its rights to a request for service under Section 213(a) of the FPA and to the issuance of a proposed order under Section 212(c) of the FPA. The Commission, upon receipt of the Local Furnishing Participating TO's waiver of its rights to a request for service under Section 213(a) of the FPA and to the issuance of a proposed order under Section 212(c) of the FPA, shall issue an order under Section 211 of the FPA specifying that such service is provided subject to the Eligible Customer's payment of all costs deemed by the Commission to be eligible for recovery under Section 212(a) of the FPA.
- d) Upon issuance of the order under Section 211 of the FPA, DSTAR shall be required to provide the requested Transmission Service in accordance with the terms and conditions of the DSTAR Tariff and such order. Transmission Service shall not commence until after the Eligible Customer complies with creditworthiness requirements pursuant to Appendix J.

12. TRANSMISSION PLANNING AND EXPANSION

Procedures for transmission planning and expansion are set forth in Appendix P.

13. INTERCONNECTION

Procedures for Interconnection are set forth in Appendix Q.

14. CREDITWORTHINESS

For the purpose of determining the ability of a Market Participant to meet its obligations related to service under the DSTAR Tariff, the Market Participant must meet the financial security requirements of Appendix J.

15. ALTERNATIVE DISPUTE RESOLUTION

15.1 APPLICABILITY

Except as limited below or otherwise limited by law (including the rights of any party to file a complaint with the Commission under the relevant provisions of the FPA), the DSTAR Alternative Dispute Resolution ("ADR") process shall apply to all disputes between parties that arise under the DSTAR Tariff except where the decision of DSTAR is stated in the provisions of the DSTAR Tariff to be final. DSTAR ADR process shall not apply to:

- a) Disputes arising under contracts that pre-date DSTAR Operations Date, except as the disputing parties may otherwise agree; and

- b) Disputes as to whether rates and charges set forth in the DSTAR Tariff are just and reasonable under the FPA.

15.2 FAST TRACK ALTERNATIVE DISPUTE RESOLUTION

15.2.1 Fast Track Arbitration

When requested by a Market Participant, the DSTAR Chief Executive Officer, or delegate, shall refer Disputes to the fast-track ADR arbitration process. A panel of three (3) arbitrators shall be available at the call of the DSTAR Chief Executive Officer, or delegate, for a decision on the next Business Day; one panel member and an alternate from each party involved in the dispute, all of whom shall have been designated at the time they become DSTAR Members. The third member of the panel shall be selected by the DSTAR Chief Executive Officer, or delegate, on a rotating basis from an independent standing panel of experts, all of whom shall meet the requirements of the DSTAR Code of Conduct. The fast-track ADR panel's decision shall be submitted by the independent arbitrator, along with a statement for his/her fee and costs to be paid by the losing party, to the parties to the dispute and the DSTAR Chief Executive Officer by facsimile or electronic mail and the decision shall stand pending an appeal, which must be taken, if at all, within thirty (30) Calendar Days after the date of the decision, either to the courts or the Commission, whichever is appropriate. A final decision of the panel, the court, or the Commission shall establish a precedent to guide future decisions of the DSTAR Chief Executive Officer, or delegate, and future fast-track panels; provided, however, that all appeals to the Commission or the courts shall be *de novo*. **[Would this be used for disputes between DSTAR and a Market Participant?]**

15.2.2 Fast Track Internal Dispute Resolution

The provisions of this Section 15.2.2 may be invoked for any dispute between DSTAR and Market Participants with the expedited time schedule described hereinafter, by delivering to DSTAR a notice requesting such fast track ADR. If so requested, DSTAR will engage in internal dispute resolution pursuant to Section 15.3 no later than three (3) Business Days following receipt of the request. Should the internal dispute resolution effort not produce a resolution, the disputing party may further elect to request non-binding mediation (as provided in Section 15.4) beginning no earlier than five (5) Business Days following the later of: i) receipt of a written request for such mediation; and ii) conclusion of the internal dispute resolution process (which any party to the dispute may elect to terminate after a good faith effort).

15.3 INTERNAL DISPUTE RESOLUTION

Any dispute between DSTAR and/or Market Participants (party or parties) arising under the DSTAR Tariff (excluding applications for rate changes or other changes to the DSTAR Tariff, which shall be presented directly to the Commission for resolution) shall be referred to a designated senior representative of each party to the dispute for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute by mutual agreement within thirty (30) Calendar Days (or such other period as the parties may agree upon), such dispute may be submitted to mediation or arbitration and resolved in accordance with the DSTAR ADR process set forth in Sections 15.4 and 15.5 below.

15.4 EXTERNAL MEDIATION

15.4.1 Selection of Mediator

In the event a dispute is not resolved through fast track ADR in accordance with Section 15.2 or internal dispute resolution in accordance with Section 15.3, the dispute shall be submitted to mediation. Within seven (7) Calendar Days of notice of the dispute being filed or after conclusion of efforts under Section 15.2 and/or 15.3, the parties to the dispute shall agree upon a mediator with mediation experience or technical or business experience in the electric power industry, or both, as deemed appropriate to the dispute. If the parties to the dispute are unable to agree upon a mediator, the Chief Executive Officer of DSTAR shall select a mediator. **[What if DSTAR is one of the parties?]**

15.4.2 Mediation

The mediator and representatives of the disputing parties with authority to settle the dispute shall, within fourteen (14) Calendar Days after the mediator's date of appointment, schedule a date to mediate the dispute. Matters discussed during the mediation shall be confidential and shall not be referred to in any subsequent proceeding. With the consent of all disputing parties, a resolution may include referring the dispute directly to a technical body (such as a WSCC technical advisory panel) for resolution or an advisory opinion or referring the dispute directly to the Commission. The mediator shall aid the parties in reaching a mutually acceptable resolution of the dispute. The mediator shall have no authority to impose a resolution upon the parties. The cost of the mediation, including the mediator's reasonable fees and expenses, shall be borne equally by the parties. If the parties have not succeeded in resolving the dispute within thirty (30) Calendar Days of the first meeting with the mediator, such parties shall be deemed to be at impasse and the dispute may be submitted to arbitration upon agreement of all parties. If such agreement cannot be reached, any one of the parties may apply to the Commission or any court of competent jurisdiction for relief.

15.5 ARBITRATION

15.5.1 Submission to Arbitration

Upon agreement of all parties, either during or after the conclusion of the processes outlined in Sections 15.2, 15.3 and 15.4, the dispute may be submitted to arbitration. If such agreement cannot be reached, any one of the parties may apply to the Commission or any court of competent jurisdiction for relief. Any arbitration initiated under the DSTAR Tariff shall, if possible, be conducted before a single neutral arbitrator appointed by the parties. If the parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the referral of the dispute to arbitration, each party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) Calendar Days select a third arbitrator to chair the arbitration panel. In either case, the arbitrator(s) shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the parties an opportunity to be heard and, except as otherwise provided herein, shall generally conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and any applicable Commission regulations.

15.5.2 Arbitration Decisions

Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) Calendar Days of appointment and shall notify the parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of the DSTAR Tariff, including its Attachments, Appendices and any associated Protocols, and any agreement entered into under the DSTAR Tariff and shall have no power to modify or change the DSTAR Tariff, including its Attachments, Appendices and any associated Protocols, and any agreement entered into under the DSTAR Tariff in any manner. The decision of the arbitrator(s) shall be final and binding upon the parties and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s) or the decision itself violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. The final decision of the arbitrator(s) must also be filed with the Commission if it affects jurisdictional rates, terms and conditions of service or facilities.

15.5.3 Arbitration Costs

Each party shall be responsible for its own costs incurred during the arbitration process and the following costs, if applicable:

- a) the cost of the arbitrator chosen by the party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or
- b) one half of the cost of the single arbitrator jointly chosen by the parties.

15.6 RIGHTS UNDER THE FEDERAL POWER ACT

Nothing in this Section 15 shall restrict the rights of any party to file a complaint with the Commission under relevant provisions of the FPA.

15.7 REVIEW OF DSTAR ADR PROCESS BY BOARD OF DIRECTORS

Within one (1) year following the DSTAR Operations Date, the DSTAR Board shall review DSTAR ADR process and determine whether to make any changes or modifications thereto.

16. LIABILITY AND INDEMNIFICATION

16.1 LIABILITY FOR DAMAGES

Except as provided for in Section 15 with respect to arbitration costs or as explicitly provided for elsewhere in the DSTAR Tariff, DSTAR shall not be liable to any Market Participant for any losses, damages, claims, liability, costs or expenses (including legal expenses) arising from the performance or non-performance of its obligations under the DSTAR Tariff, including but not limited to any Schedule adjustments made by DSTAR, except to the extent that they result from negligence or intentional wrongdoing on the part of DSTAR.